

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Chris Bogenrief,**  
Petitioner-Appellant,

v.

**Sioux City Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-107-1383**  
**Parcel No. 8947-28-460-100**

**Docket No. 11-107-1384**  
**Parcel No. 8947-28-460-110**

**Docket No. 11-107-1385**  
**Parcel No. 8947-28-460-120**

On March 26, 2013, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Chris Bogenrief was self-represented. The Board of Review was represented by attorney Jack Faith of Sioux City. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Chris Bogenrief appeals from the Sioux City Board of Review decisions reassessing three commercial properties located at 302 Jones Street, Sioux City, Iowa, on behalf of owner Alliance Properties, LLC. The assessments represent improvement value only.

According to the property record cards, the parcels are one-story, office condominiums comprising the first floor of the Warfield Building, a 1906 historic property that was extensively renovated in 2008. Parcel 8947-28-460-100 is 8269 square feet and is designated Unit 100. The parcel was initially assessed at \$768,700 as of January 1, 2011. Parcel 8947-28-460-110 is 2319 square feet and is designated Unit 110. The parcel was initially assessed at \$215,500 as of January 1,

2011. Parcel 8947-28-460-120 is 1857 square feet and is designated Unit 120. The parcel was initially assessed at \$172,600 as of January 1, 2011. The subjects have a combined assessed value of \$1,156,800.

Bogenrief protested to the Board of Review on the grounds that the properties were assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2), and that there were errors in the assessments under section 441.37(1)(a)(4). His claim of error essentially restates the over-assessment claim and will not be separately considered. Bogenrief requested assessed values of \$520,641 for Unit 100, \$146,011 for Unit 110, and \$140,307 for Unit 120. The Board of Review denied the petitions.

Bogenrief then appealed to this Board regarding the three parcels, reasserting the claim of over-assessment, and requested a value of \$641,922 for Unit 100; \$180,024 for Unit 110; and \$144,159 for Unit 120. This Board consolidated the hearings for the three parcels.

Chris Bogenrief testified on behalf of the owner. Bogenrief is a fulltime commercial real estate broker. He believes this condominium building, known as United Center, is the first batch of office condominiums sold in Sioux City. The lower three floors of the Warfield Building are commercial condominiums and the upper three floors are residential condominiums. The horizontal condominium regime is known as United Center Condominiums. In his opinion, the commercial condominiums' assessed values are well above the assessments of other Class A office space in the city.

The three units were purchased together for \$1,119,500 in July 2009 (Exhibit 12). In Bogenrief's opinion, this price should be adjusted to account for additional expenditures associated with the purchase (Exhibit 13). First, he believes \$164,500 for a contingency hold back note for possible future tax liability should be subtracted. Second, he believes \$195,000 paid for a renewable 50-year exclusive parking permit license for the use of ten adjacent spaces should reduce the purchase price. Third, he believes the \$61,000 finish cost for Unit 120 should be added to the purchase price

because it was purchased as an unfinished shell or “Grey Box.” Bogenrief argued that these adjustments would reduce the actual combined purchase price for the three units to \$826,000.<sup>1</sup> Bogenrief testified that the Small Business Administration recognized the purchase price to be \$955,000, yet both the purchase agreement and the property record card list the sale price as \$1,119,500.

The Board finds Bogenrief’s argument without support. First, the purchase agreement does not delineate the value of the parking permit license and therefore the Board cannot determine the consideration provided for this particular amenity. Second, the cost of property modifications after the purchase cannot be utilized to make adjustments to the purchase price. Finally, the purchaser’s liability under the hold back note was dependent on whether its tax payments were more or less than the schedule established by the parties. In light of the purchase agreement and property card which list the sale price as \$1,119,500, we decline to speculate how the inclusion of a condition, such as a holdback note for future tax liability, ultimately affected the amount of consideration paid by the purchaser in this sales transaction.

Bogenrief submitted a letter from Ron McManamy, President of United Real Estate Solutions. McManamy arrived at a \$961,225 value for the property by the income approach to value, using actual rents of \$10/sf (square foot) Net-Net-Net (NNN)<sup>2</sup> for Units 100 and 110, and \$12/sf NNN for Unit 120 (Exhibits 14 – 16). He used a market vacancy rate of 10% and a market capitalization rate of 12%.<sup>3</sup> He explained that there are thousands of square feet of office space available in the downtown in the \$7/sf to \$12/sf gross range. He reported \$10/sf NNN is the highest lease rate achieved and that the downtown vacancy rate actually exceeds 24%. Bogenrief defended the 12% capitalization rate used;

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<sup>1</sup> Based on this Board’s calculation, the adjustments would actually result in a value of \$821,000, not \$826,000.

<sup>2</sup> Generally, under an NNN or triple net lease, the tenant or lessee pays all real estate taxes, building insurance, and maintenance (the three "Nets") on the leased property in addition to any normal fees such as rent and utilities.

<sup>3</sup> Assessor Al Jordan believes the market capitalization rate is 9% to 10%, not the 12% quoted by Bogenrief.

indicating that it is a conservative rate for downtown Sioux City and that actually 13.5% is a more realistic rate in the area.

Bogenrief provided the following information on fifteen downtown commercial buildings to support his conclusions (Exhibit 9).

Property	Address	Rate	Class	Built	Renovated	Sq Ft (Leasable)
Terra Centre/Kraus-Anderson	600 4th	\$9-\$11/sf	B	1983	Ongoing	33,951
Terra Centre/Terra Real Estate	600 4th	\$14.25/sf gross	A+	1983	Ongoing	159,974
Badgerow Building	622 4th	\$8.50/sf NNN	A-	1933	2008	110,212
HOM Furniture	417 4th	\$7-\$12 gross	B	1985	2008	17,000
MidAmerican	401 Douglas	\$12.48/sf gross	A+	1979	Ongoing	174,775
Stifel Nicolaus	700 4th	\$8 sf NNN	B	1972	Ongoing	53,188
United Center	302 Jones	\$10-\$15/sf NNN	A+	1906	2008	45,000
Orpheum Building	520 Pierce	\$14.92/sf gross	B-	1928	2001	50,656
Commerce Building	520 Nebraska	\$5.5-\$8/sf	C	1913	Ongoing	107,421
Pioneer Bank Building	701 Pierce	\$8-\$10.50/sf	B-	1971	1998	56,992
Williges Building	613 Pierce	\$7+\$3.50/sf NNN	B	1930	2008	22,650
US Bank	501 Pierce	\$10/sf gross	A			80,000
Call Terminal Building	1106 4th	\$6.50-\$8/sf +cam	A-	1905	Ongoing	83,700 (61,200)
Egralharve	1119 4th	\$15/sf+\$2.75	A-	1910	Ongoing	20,800
Evans Block (Heidman)	1128 4th	\$10/sf+\$5	A+	1894	2005	18,392 (15,480)

It is Bogenrief's opinion the most prestigious office building in Sioux City is located at 600 4th Street. It is assessed at \$46.60 per-square foot, as compared to the subject at \$93/sf. He identified another comparable property located at 1106 4th that is assessed at \$50/sf, and a totally restored, class A property at 1119 4th which is assessed at \$66/sf. The property he identified as the best comparable is located at 1128 4th and is assessed at \$77.63/sf (Exhibit 10).

Bogenrief did not offer any evidence of comparable sales for a market approach to value. The sales comparison approach is the required and preferred method of valuing property for tax assessment

purposes. § 441.21(1)(b). Only if the value cannot readily be determined using comparable sales, may “other factors” such as the income or cost approaches be considered. § 441.21(2). There is nothing in the record to indicate sales were not available for analysis or available sales resulted in an unreliable value conclusion.

Bogenrief did not complete a cost approach to value because in his experience it is irrelevant in the market. He believes the income approach is the best for valuing income-producing property. Bogenrief did use the subject properties’ combined sale price as an indication of value; however, he discounted it significantly for perceived adjustments. We are not convinced there was adequate support for the adjustments Bogenrief made to the sale price.

City Assessor Alan Jordan testified sale prices of commercial units in the Warfield building had an impact on the subject parcels’ assessments. Jordan testified the Declaration of Value lists the subject properties’ sale price at \$1,119,500. Jordan also indicated that Units 200 and 300 sold for combined price of \$900,000 in February 2010. They sold as a 9332 square foot “Grey Box” at roughly \$96.40 per-square foot. Unit 210 sold in June 2011 for \$575,000, or \$113 per-square foot. It was an unfinished shell and had 5069 square feet. Unit 310 sold for \$127,600 as a 1075 square foot shell in June 2012. The sale price per-square foot was \$119. Unit 320 sold in June 2012 for \$402,588, or \$95.45 per-square foot. The unit was a 4218 square foot shell. Units 330 and 340 sold in October 2010 for \$279,000, or \$96.54 per-square foot. The units were 2890 of unfinished shell.

Jordan explained that he did not rely solely on the cost approach to revalue the whole building in 2011. He also relied on sales data, as explained above, from the Warfield Building. Based on the sales prices in this building, he allocated values to each of the units. Although varying in size, most of these sales were for unfinished shells at a range of \$95.45 per-square foot to \$119 per-square foot, with a median of \$96.54 per-square foot. Since the 2011 assessments of Unit 100 was \$92.96 per-square

foot, Unit 110 was \$92.93 per-square foot, and Unit 120 was \$92.95 per-square foot, these sales support the 2011 assessments.

Reviewing the record as a whole, we find the preponderance of the evidence does not establish that the subject properties are assessed for more than authorized by law.

### ***Conclusion of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Bogenrief did not provide sufficient, relevant evidence to support his claim of over-assessment as of the January 1, 2011, assessment date. The sales prices of commercial condominium space in the same building support the assessments of Units 100, 110, and 120.

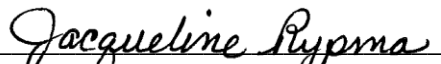
Under Iowa law, the properties' combined July 2009 sale price cannot, by itself, be utilized to establish the properties' market value. Section 441.21(1)(b) makes it clear that a sales price for the subject property in a normal transaction, just as a sales price of comparable property, is a matter to be considered in arriving at market value but does not conclusively establish that value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996). The subject units sold for a combined price of \$1,119,500, or \$89.96 per-square foot in July 2009. Considering the sales of other condominium units in the building with a median sale price per-square foot of \$96.54, the totality of the evidence does not support Bogenrief's claims of over assessment.

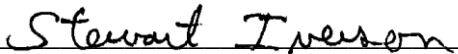
Bogenrief has not shown that the 2011 assessment of Alliance Properties, LLC is excessive nor did he provide sufficient evidence of the properties' value as of January 1, 2011. We find the preponderance of the evidence fails to support Bogenrief's claims that Alliance Properties, LLC's properties were assessed for more than fair market value as of January 1, 2011.


Therefore, we affirm Alliance Properties, LLC's property assessments as determined by the Board of Review.

THE APPEAL BOARD ORDERS the property assessment of Unit 100 is \$768,700, the property assessment of Unit 110 is \$215,500, and the property assessment of Unit 120 is \$172,600 as of January 1, 2011.

Dated this 25th day of April, 2013.

  
Jacqueline Rypma, Presiding Officer


  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

Copies to:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>April 25, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	